

FILED BY CLERK

MAY 19 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2009-0332
)	DEPARTMENT A
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JOHN MICHAEL GUTIERREZ,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20091176

Honorable Terry L. Chandler, Judge

AFFIRMED

Emily Danies

Tucson
Attorney for Appellant

H O W A R D, Chief Judge.

¶1 Appellant John Gutierrez was convicted after a jury trial of aggravated domestic violence with three or more prior domestic violence convictions. The trial court found he had two historical prior felony convictions and sentenced him to an enhanced, partially-mitigated term of 3.5 years in prison. Counsel has filed a brief in compliance

with *Anders v. California*, 386 U.S. 738 (1967), avowing she has reviewed the entire record and found no arguable issue to raise on appeal. In compliance with *State v. Clark*, 196 Ariz. 530, ¶ 32, 2 P.3d 89, 97 (App. 1999), counsel has also provided “a detailed factual and procedural history of the case with citations to the record, [so] this court can satisfy itself that counsel has in fact thoroughly reviewed the record.” Pursuant to our obligation under *Anders*, we have reviewed the record in its entirety and are satisfied it supports counsel’s recitation of the facts. Gutierrez has not filed a supplemental brief.

¶2 Viewed in the light most favorable to upholding the jury’s verdict, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999), the evidence established that in March 2009, Gutierrez, yelling and cursing, followed his son and his son’s friends out of the apartment complex where they all lived and hit his son in the face. At the time of this offense, Gutierrez had been convicted of six domestic violence offenses committed within the previous eighty-four months. *See* A.R.S. § 13-3601.02(A) (“A person is guilty of aggravated domestic violence if the person within a period of eighty-four months commits a third or subsequent . . . domestic violence offense . . .”). Gutierrez also had two historical prior felony convictions pursuant to A.R.S. § 13-105(22)(a)(v), (c).

¶3 We conclude substantial evidence supported the factual findings necessary for Gutierrez’s conviction, *see* A.R.S. §§ 13-2904(A)(1), 13-3601(A)(4), 13-3601.02(A), (F), and his sentence is within the authorized range, *see* A.R.S. § 13-703(C), (J). In our examination of the record pursuant to *Anders*, we have found no reversible error and no

arguable issue warranting further appellate review. *See Anders*, 386 U.S. at 744.

Accordingly, we affirm Gutierrez's conviction and sentence.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Presiding Judge

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge